

employee plans news

PROTECTING RETIREMENT BENEFITS THROUGH EDUCATING CUSTOMERS

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Tax Exempt and Government
Entities Division

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Calendar of EP Benefits Conferences

EP Responds To Practitioners' Comments on Staggered Remedial Amendment Cycles

Interview with Andrew Zuckerman, EP Director, Rulings & Agreements

With the end of Cycle A, what is your assessment of the first year's experience with the new process of [Staggered Remedial Amendment Cycles](#) (per Revenue Procedure 2005-66)?

Our experience is somewhat limited at this point because the Cycle A submission period did not end until January 31, 2007. Because most Cycle A applications were not submitted until that time we experienced a "mini-spike" in inventory. We had hoped that many applications would be submitted earlier in the year. This "mini-spike" could result in a longer response time in the issuance of determination letters. One of our priorities in the coming year is to determine how to better encourage employers and practitioners to submit their determination letter requests earlier in each cycle.

This is a new process, so there is a learning curve both for us and for the public. Early on we received a number of applications that were not complete or did not include the required restated plan documents. We addressed these problems directly through correspondence and through various outreach efforts. We believe this will help us resolve further problems as we proceed through future cycles.

What feedback has the IRS received from the Retirement Plans Community on the new process?

Joseph Grant, Director of IRS Employee Plans, recently asked for feedback on the new process at the LA Benefits Conference. We have received mixed reactions from practitioners. Some expressed pleasure at being able to even out their workload. Others expressed concern that "off-cycle" plans truly in need of determination letters are unable to receive them until all "on-cycle" applications have been reviewed. We also received comments about the interim amendments that will be required in the future.

How is the IRS being responsive to the feedback?

Mr. Grant has stated that he and his staff will work with practitioners to make the new process work by listening and addressing their concerns. We are grateful for the feedback and take it very seriously because it will assist us in making modifications to this new process that will be mutually beneficial to the Retirement Plans Community

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and to the Service. We are in constant dialogue about input we receive from our customers. We are making modifications to Revenue Procedure 2005-66 as a result of that input.

Since the majority of [Cycle A applications](#) were received in late January, how are you handling the “mini-spike?”

We have a group of employees who are dedicated exclusively to working these cases, but the group is not as large as we'd like it to be because of the number of employees who must focus on other work priorities including the review of pre-approved plans or the processing of previously suspended cash balance conversion cases. We will, as always, work cases in received-date order with priority given to Form 5310 termination applications. We hope that practitioners will be more inclined to file earlier in subsequent cycles so that we can give the timely customer service this process was designed to provide.

Should [Cycle B applicants](#) wait to submit until the Cycle A “mini-spike” is processed?

No. We encourage applicants to file as early as possible in all cycles. We would like to begin working applications as soon as they come in. Issuing letters on those cases will reward those who did not wait until the end of the cycle to submit.

What priority is applicable to “[off-cycle](#)” applications? Are these applications worked ahead of “[on-cycle](#)” applications?

Currently, other than terminating plans, “off-cycle” applications will be handled in receipt order and only after the “on-cycle” cases are processed. During the first year of the staggered determination process we have been unable to process any “off cycle” cases other than terminated plans.

After receiving comments from employers and practitioners, we recognize the need to consider the expansion of the categories of “off-cycle” submissions we should process. Our discussions to date have centered on treating those newly adopted individually designed plans whose cycle would not occur for a specified period of years after the plan's adoption and plans with a demonstrated urgent business necessity for a determination letter as “on-cycle.” Should this change be adopted, any request for a determination letter under a claim of urgent business necessity will be carefully reviewed and will be granted on **an extremely limited** basis. Any changes adopted to our program will be announced in an upcoming revenue procedure.

What are the incentives for submitting applications earlier in a cycle period rather than waiting until the end of the 12-month period?

The biggest incentive is that the determination letter would be received much more promptly after submission than if the filing occurred at the end of the cycle along with thousands of others. If taxpayers and practitioners continue to create mini-spikes by submitting the vast majority of submissions during the last weeks of the cycle, they will find that they will wait longer to receive a determination letter.

Why is it important to the IRS that the new process under the Staggered Remedial Amendment Cycles works?

This process has been designed to level the determination workload. It will result in enhanced customer service by the faster issuance of timely and high quality determination letters. It will also enable the Service to maintain an active enforcement presence because examination resources

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EP Responds to Practitioners' Comments... *continued from page 2*

will no longer be periodically diverted to determination letter work, as has historically happened during periods of high inventory.

Will the IRS go back to the old process for determination applications?

No. Joseph Grant, in his recent remarks at the LA Benefits Conference stated, "The IRS is committed to the new process of working determination applications based on remedial amendment cycles. The IRS will not go back to the old "inefficient" process."

How is the IRS educating the Retirement Plans Community about the new process?

EP is educating the community in a variety of ways. The best overall way is information posted to the Retirement Plans Community [web page](#). Click on "[Staggered Remedial Amendment Period Revenue Procedure](#)" to obtain the latest information. Also, by articles in this newsletter; for example, a February 1, 2007 Special Edition with information on the opening of Cycle B. In addition, EP employees educate the community at various educational events (such as at EP Benefits Conferences).•

News for Retirement Plan Sponsors

Available for your - or your clients' - pleasure: the other member of the *Employee Plans News* family of newsletters, the *Retirement News for Employers*.

The *Retirement News for Employers* is filled with retirement plan news and articles designed primarily for many of your clients: members of the small business community. Subscription to the *RNE* continues to grow. So act now; don't delay: Join the thousands of satisfied subscribers who have signed up for the *Retirement News for Employers*.

The [Winter 2007 Edition](#) featured stories on such topics as:

IRS Issues Additional Pension Protection Act of 2006 Guidance and Introduces Web Page;
The Fix is In: Common Plan Mistakes - "[Self-Correction Program](#);" and
The latest "[Timing is Everything](#)" flyer.

It's easy to subscribe: Just go to the [Retirement Plans Community web page](#), select "Newsletters," and click on "Retirement News for Employers."•

Critical FewPoints...by Director, EP Examinations

In the last issue of this newsletter, I explained the three “Critical Few” priorities for this fiscal year. These items explain the priorities and goals of the Examination Program. To recap, the three items are:

- Expand Compliance Contacts
- **Research and Analysis**
- Focused Examinations

“Research and Analysis” is highlighted in red as I would like to address this item in detail and inform you as to the importance of this priority.

Research and Analysis provides us the opportunity to select the most appropriate returns for examination potential. We hope to no longer waste our time and efforts on returns that have little or no problems or issues. For those of you that have a well-administered plan, perform internal audits of your plan and trust, and correct any mistakes when discovered, the chances that we will come knocking on your door are less.

To select the most appropriate returns, we have established two groups to assist us in which returns should be selected. The first group is the Data Analysis Unit, or DAU. The DAU was formed to support EP (and all other Tax Exempt and Government Entities [TE/GE] areas) compliance activities by providing data analysis which will ultimately impact strategic planning, workforce processes and examination case selection. This group is comprised of economists, statisticians, mathematical statisticians and operations research analysts. All of the members were hired from outside the Service from various parts of the country. All hold degrees in their professions and have a host of experience in various areas of data analysis.

One of the eight Operating Priorities outlined in the [FY 2007 Employee Plans Work Plan](#) in support of these goals is to **“Refine Compliance Risk Assessment/Market Segment Analysis and Begin Classifying Examinations Based on this Data.”** The DAU is currently analyzing this program. The approach seeks to understand plan features, major issues from closed cases, and other common trends by plan type across all business sectors.

The spectrum of skills represented in the DAU can be applied to a variety of topics, aspects, and problems throughout Employee Plans. The DAU is here to provide specific client solutions. Some of the products the DAU has developed include:

- Studies to understand the overall picture of segments within the TE/GE universe.
- Identification of areas of potential noncompliance.
- Creation of electronic monitoring tools.
- Data system process consultancy.

The second group is the Employee Plans Compliance Unit, or EPCU. This group has been discussed in prior articles. Nonetheless, I will give you a brief description of the group and the projects that are currently open.

EPCU consists of employees hired from within the Service and are located throughout the country. This Unit focuses on some of the most high profile projects affecting EP. Some of the projects EPCU addresses frees up resources in our Classification Unit which will be redirected to improve our inventory selection techniques. In addition, the Unit will investigate new ways of using available data and analytical techniques.

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The data analysis performed by the EPCU mainly focuses around the evaluation and selection of EPCU projects. The Unit has a Computer Research Analyst who uses a variety of internal and external data sources to determine areas of potential noncompliance. The EPCU evaluates results based on data which falls outside normal standards. Some examples would include:

- Identification of reported fraud from analysis of the Form 5500.
- Analysis of Form 5330 data on prohibited transactions for 401(k) plans.
- Analysis of party-in-interest transactions through coordination with the DOL.
- Other similar situations which are possible violations of pension law.

As suggestions for potential project activities are forwarded to the Unit, an initial analysis is performed to determine whether the suggestion has potential, and where in the organization (i.e., EPCU, field examination, CE&O) it is best to address compliance.

Two of the seven projects currently open in the EPCU are:

Minimum Funding Deficiency Project - The EPCU continues to devote resources to defined benefit and defined contribution plans which have a reported minimum funding deficiency. Plans subject to the minimum funding requirement, as specified in section 412, must report whether the funding requirement has been met for the plan year. The EPCU issues a compliance letter to plan sponsors to determine if the reported funding deficiency was corrected, including the filing of a Form 5330 and payment of the excise tax.

403(b) Universal Availability Project - School districts are being contacted to determine if they are in compliance with the nondiscrimination provisions of IRC section 403(b)(12)(A)(ii), also known as the "universal availability" requirement. A questionnaire is included with the compliance letter to identify if their employees are provided the opportunity to participate in the school district's 403(b) plan. This is the newest project started by the EPCU.

Two of several new projects this fiscal year include:

SIMPLE IRA Plan Relief Project - In 2006 the Service issued nearly 200,000 letters to sponsors of SIMPLE IRA plans. This letter offered relief to those who were not in compliance with the applicable provisions of EGTRRA. The EPCU will conduct a follow-up on a sample of the 200,000 to verify compliance with the terms of this relief letter.

5498 Project - Many taxpayers have contributed to IRAs and/or have rolled over funds into IRAs. The Unit will look into whether these arrangements and related transactions were handled in accordance with the law.

In the last edition of this newsletter, I also briefly mentioned the LESE project. The acronym represents:

Learn - Learn all we can about the general and specific compliance issues.

Education - Tell the members of the targeted population what we learned and what we expect them to do to correct through outreach initiatives and soft contact notices issued from the EPCU unit.

How to Subscribe to *Employee Plans News*

The *Employee Plans News* is issued only through IRS e-mail. For your free subscription, please go to the [Retirement Plans Community web page](#) and subscribe online by selecting "Newsletters" under "Retirement Plans Community Topics." All editions of the *Employee Plans News* are archived there.

For your convenience, we have included Internet links to referenced materials throughout the *Employee Plans News*. These links are identified by blue and underlined text.

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Self-Correct - Give that specific population the opportunity to make correction via EPCRS. Correction alternatives would be outlined through outreach initiatives (speeches, web, publications, etc.) and soft contact notices.

Enforce - Perform follow-up examinations for that specific population taking a firm position on those who have not corrected.

To identify issues of interest we will consider available information from agents, referrals, media, determination & Voluntary Correction submissions, outreach, and other sources that will be compiled for trends or potential issues. During this current fiscal year we will start eight specific LESE projects looking at 50 cases for each project. We are in the process of evaluating our data to identify the best possible issues/population for our initial project.

As you see, we are quite serious about finding the right returns to target for examination. We offer many avenues for you (outreach, web content, correction programs, etc.) to learn about our priorities and how you can avoid the problems we are finding and/or correcting the errors in your plan just as soon as possible. Make no mistake, our examination program is in full swing and we are out to find those plans not in compliance. •

Web Spins - The Retirement Plans Site

We're back: **Web Spins** - the column that takes you for a quick spin around the **Retirement Plans Community web page**.

More New FAQs

In the Winter edition of the *Employee Plans News* we told you about our new FAQs regarding [Loans](#), [Hardship Distributions](#) and [Plan Investments](#). We have recently added more FAQs regarding [Notices from IRS \(CP 403 and CP 406 Notices\) - Delinquency Notices](#) (see related article on page 13). Check out these and our other [Frequently Asked Questions](#).

Small Business Products Available

The [2007 Tax Calendar for Small Businesses and Self-Employed](#) is filled with useful information on general business taxes, IRS and SSA customer assistance, electronic filing and paying options, retirement plans, business publications and forms, common tax filing dates, and Federal legal holidays.

The [2007 Small Business Resource Guide](#) (SBRG) CD-ROM will be available in March. This handy, interactive CD is designed to equip small business owners with the skills and knowledge needed to successfully manage a business. The CD covers a wide range of topics, from starting a business to retirement plan options. •

Employee Plans Published Guidance

(January 2007 – March 2007)

Regulations

[T.D. 9310, 72 Fed. Reg. 4955](#)

Set forth the mortality tables to be used under section 412(l)(7)(C)(ii) of the Code to determine current liability for participants and beneficiaries (other than disabled participants) for plan years beginning on or after January 1, 2007.

Revenue Procedures

[Rev. Proc. 2007-4, 2007-1 I.R.B. 118](#)

Basic EP and EO letter ruling procedure.

[Rev. Proc. 2007-5, 2007-1 I.R.B. 161](#)

Basic EP and EO technical advice procedure.

[Rev. Proc. 2007-6, 2007-1 I.R.B. 189](#)

Basic EP and EO determination letter procedure.

[Rev. Proc. 2007-8, 2007-1 I.R.B. 230](#)

Basic EP and EO user fee procedure.

Notices

[Notice 2007-3, 2007-2 I.R.B. 255](#)

Contains the 2006 Cumulative List of qualification changes, etc., under Rev. Proc. 2005-66.

[Notice 2007-6, 2007-3 I.R.B. 272](#)

Announces the reopening of the determination letter and examination programs for cash balance and other hybrid defined benefit pension plans and requests comments.

[Notice 2007-7, 2007-5 I.R.B. 395](#)

Pertains to 8 different distribution provisions under PPA '06 that are effective in 2007 or earlier.

[Notice 2007-8, 2007-3 I.R.B. 278](#)

Describes certain in-service distributions and seeks comments under section 401(a)(36).

[Notice 2007-14, 2007-7 I.R.B. 501](#)

Seeks comments with respect to the benefits that should be permitted in a qualified defined benefit plan.

[Notice 2007-18, 2007-9 I.R.B. 608](#)

Provides guidance under section 4965 of the Code to tax-exempt entities described in section 4965(c) that may be parties to prohibited tax shelter transactions.

[Notice 2007-28, 2007-14 I.R.B.](#)

Addresses the modifications to the deduction rules under section 404(a)(1) for contributions to qualified defined benefit plans that are currently in effect as well as the deductibility of contributions to combinations of plans under section 404(a)(7).

DOL Corner

The Department of Labor's Employee Benefits Security Administration (DOL/EBSA) announced new regulations and guidance related to implementation of the Pension Protection Act (PPA). DOL/EBSA has a dedicated web page for PPA related information including the Act itself, and regulations and other guidance issued by DOL, the Department of the Treasury, and the Pension Benefit Guaranty Corporation. You can subscribe to DOL/EBSA's web site homepage, PPA page and Compliance Assistance page for notice of updates.

Pension Distributions under Qualified Domestic Relations Orders

On March 7, 2007, DOL/EBSA published in the Federal Register an [interim final rule](#) regarding the qualified domestic relations order (QDRO) requirements of ERISA.

The rule is being issued under the PPA, which required DOL to issue by August 2007 regulations clarifying that a domestic relations order otherwise meeting ERISA's QDRO requirements would not fail to be treated as a QDRO solely because of when it is issued or because it is issued after, or revises, another domestic relations order. The rule includes examples to address various circumstances involving the timing of a domestic relations order.

While the rule is effective 30 days after publication, the public is invited to submit written comments by May 7, 2007, electronically to e-ORI@dol.gov or through the federal e-rulemaking portal at www.regulations.gov. Comments may be mailed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N-5669, U.S. Department of Labor, 200 Constitution Avenue, NW, Washington, DC 20210, Attention: QDRO Regulation.

Inherited IRA Regulation and Exemption

On February 15, 2007, DOL/EBSA published in the Federal Register an [interim final rule](#) and [proposed class exemption](#) relating to the distribution of individual account benefits for missing nonspouse beneficiaries in terminated plans. DOL/EBSA also posted the model plan termination notice in a user friendly format on the PPA page.

The PPA amended the Internal Revenue Code to allow the rollover of certain retirement benefits of a deceased participant into a tax-favored inherited IRA created on behalf of a non-spouse beneficiary. The new rule and related proposed class exemption conform to the PPA by amending existing distribution requirements for terminated defined contribution plans, including abandoned plans, to require rollovers into inherited IRAs for missing nonspouse beneficiaries.

While the rule is effective 30 days after publication in the Federal Register, the public is invited to submit written comments on both the interim final rule and the proposed class exemption. Public comments on the rule may be mailed to the Office of Regulations and Interpretations, Employee Benefits Security Administration, Room N5669, U. S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, or by email to e-ORI@dol.gov or through the federal e-rulemaking portal at www.regulations.gov. Comments on the proposed class exemption may be mailed to the Office of Exemption Determinations in Room N5700, by email to e-OED@dol.gov or through the federal e-rulemaking web site above. Those [comments received to date](#) are posted on the PPA web page.

Cross Trading Statutory Exemption

On February 12, 2007, DOL/EBSA published in the Federal Register an [interim final rule](#) implementing the statutory exemption under the PPA allowing investment managers of plans governed by the Employee Retirement Income Security Act (ERISA) to execute cross-trades if certain conditions are met. The interim rule establishes the requirements for the policies and procedures investment managers must adopt to engage in cross-trades.



DOL Corner *continued from page 8*

Although the rule on cross-trading policies and procedures is effective 60 days after publication in the Federal Register, the public is invited to submit written comments on the interim final rules. Comments may be mailed to the Office of Exemption Determinations, Employee Benefits Security Administration, Room N5700, U. S. Department of Labor, 200 Constitution Ave., N.W., Washington, D.C. 20210, or by email to e-OED@dol.gov or through the federal e-rulemaking portal at www.regulations.gov.

Investment Advice Statutory Exemption

DOL/EBSA took two actions on the statutory exemption for investment advice in the PPA. The PPA amended ERISA by adding a new prohibited transaction exemption that allows greater flexibility for investment advisers to give advice to participants of 401(k) plans and individual retirement accounts (IRAs).

On February 2, 2007, DOL/EBSA announced the release of [Field Assistance Bulletin \(FAB\) 2007-01](#). The FAB clarifies that past guidance relating to investment advice, including Interpretive Bulletin 96-1, Advisory Opinions 97-15A, 2001-09A (SunAmerica Advisory Opinion), and 2005-10A, continues to represent the views of DOL/EBSA, and may continue to be relied upon.

The FAB also specifically addresses the standards for selecting and monitoring a fiduciary investment adviser, both under the investment advice exemption of the PPA and more generally. The guidance addresses the level-fee requirement of the exemption and whether affiliates and employers of persons who serve as fiduciary advisers are subject to the conditions of the exemption.

On December 4, 2006, DOL/EBSA published in the Federal Register two Requests for Information to assist DOL/EBSA in implementing the exemption relating to 401(k)-type plans and IRAs.

Under the exemption, one of the ways in which investment advice may be given is through the use of an unbiased computer model. The computer model must be certified by an independent expert under rules to be prescribed by DOL/EBSA. The RFI on investment advice for 401(k)-type plans solicited information to assist DOL/EBSA in determining what expertise and procedures may be needed to qualify an expert to certify a computer model under the exemption. The PPA also requires DOL/EBSA to issue a model notice on fee disclosures related to advice. In this regard, the RFI also solicited information on the types of fee disclosure materials currently used and their usefulness to participants.

The RFI on investment advice for IRAs will assist DOL/EBSA in assessing the feasibility of using computer models to provide advice to IRA participants. The PPA requires DOL/EBSA to solicit information from at least the top 50 IRA trustees and other entities offering computer model investment advice programs. A separate copy of the RFI, in addition to its publication in the Federal Register, was provided to the entities so identified to ensure their receipt.

The RFI on investment advice for [401\(k\) plans](#) and [IRAs](#) is available on [DOL/EBSA's PPA web page](#). The comments on the RFI on [investment advice for 401\(k\) plans](#) and the comments on the RFI on [investment advice for IRAs](#) also are posted on the PPA page.

Individual Benefit Statements and Diversification Notices

On December 20, 2006, DOL/EBSA issued [FAB 2006-03](#) providing guidance relating to individual benefit statements and notices of freedom to divest employer securities.

The PPA improved the individual benefit statements required to be provided to participants and beneficiaries under ERISA. Among the new requirements are more frequent periodic pension benefit statements and new notices regarding participant diversification rights. These new requirements generally are effective for plan years beginning after December 31, 2006.

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In an effort to address interim interpretive and compliance concerns, pending the adoption of regulations by DOL/EBSA, the FAB provides DOL/EBSA's views on what would constitute good faith compliance with certain of the new requirements. The FAB specifically provides guidance on form, manner, content, and timing requirements pertaining to individual benefit statements. The FAB also provides guidance on the extent to which furnishing the first individual benefit statements can satisfy diversification notice requirements.

Contacting Employee Plans

The *Employee Plans News* welcomes your comments about this issue and/or your suggestions for future articles.

Send comments/suggestions to:

EP Customer Education & Outreach
SE:T:EP:CEO
1111 Constitution Avenue, N.W., PE-4C3
Washington, D.C. 20224

or FAX (202) 283-9525

or E-Mail: RetirementPlanComments@irs.gov

For EP Taxpayer Assistance:

For retirement plans technical and procedural questions:

Please call (877) 829-5500

Or visit the Contact EP/Services section at www.irs.gov/ep.

For questions relating to retirement income, IRAs, Roth IRAs, educational IRAs, medical savings accounts and section 125 cafeteria plans:

Please call (800) 829-1040

For further **Employee Plans Information:** Go to www.irs.gov/ep.

Proposed PPA Revisions to Form 5500 Annual Report for 2008

On December 8, 2006, DOL/EBSA, the IRS and the PBGC announced [proposed supplemental revisions](#) to the 2008 Form 5500. The proposed revisions implement amendments to the annual reporting and pension funding requirements of ERISA and the Internal Revenue Code enacted as part of the PPA. The proposal supplements a more general revision of the 2008 Form 5500 proposed by the agencies in July 2006.

The supplemental proposal would replace the Schedule B (Actuarial Information) filed by defined benefit pension plans with separate actuarial schedules for [multiemployer plans](#) and [single employer plans](#). The supplemental proposal also would add questions to the [Schedule R](#) (Retirement Plan Information) to collect new information on defined benefit pension plans required under the PPA.

Finally, the supplemental proposal would establish the Form 5500-SF, which was part of the agencies' July 2006 proposal, as the simplified report required by PPA for plans with fewer than 25 participants. These proposed revisions would be effective for 2008 plan year filings.

The [comments](#) are posted on DOL/EBSA's PPA page.

Upcoming Compliance Assistance Events

Voluntary Fiduciary Correction Program Workshops: April 18 in San Jose, California and August 2 in Lake Buena Vista, Florida.

Visit DOL/EBSA's web site at www.dol.gov/ebsa for the registration brochure for these seminars and for the announcement of additional seminars around the country.

PBGC Insights

Effect of Treasury Mortality Tables on PBGC Requirements



[Technical Update 07-1](#) provides guidance on how the establishment by the Secretary of the Treasury of new mortality tables for determining current liability affects premium calculations and other PBGC requirements (in particular, reporting requirements under ERISA sections 4010 and 4043). The PBGC modified this technical update on February 15, 2007, to make minor changes and to state under section III.C that for advance reporting of a reportable event with an effective date in a plan year beginning in 2007, the fair market value of assets is used to determine whether a company is subject to advance reporting.

Mandatory Premium E-Filing Reminder

Administrators of PBGC-insured plans are reminded that all premium filings for plan years beginning on or after January 1, 2007, must be electronically submitted to PBGC via PBGC's web-based application called My Plan Administration Account (My PAA). This requirement applies to all types of filings (estimated and final filings whether original or amended) and for all plans (regardless of size). Note that large plans (those with 500 or more participants for the prior year) have been required to e-file since July 1, 2006, for plan years beginning on or after January 1, 2006.

Premium E-Filing Tips – Start Early!

Electronically filing PBGC premiums is easy, but it does take some initial planning and set-up time. Well before a plan has a filing due to PBGC, we urge plan administrators and other pension practitioners to:

- **Learn About Premium E-Filing** - Review information on PBGC's web site to familiarize yourself with how My PAA works. Some of the resources available include tips to help you get started, answers to frequently asked questions, and online demonstrations of the e-filing methods. We also suggest that you attend one of the free My PAA webcasts that will be held in September and October 2007.
- **Register for a My PAA Account** - As soon as you know that you will be involved with premium e-filing, you should register for a My PAA account. You only need to register once - the user ID and password you establish are then used for all plans, premium filings, e-filing methods, and My PAA tasks for which you are responsible.
- **Determine the Plan's E-Filing Method and E-Filing Team** - Determine the plan's preferred e-filing method (use My PAA's data entry screens, import the filing, or upload the filing), whether payment will be made within My PAA or outside of My PAA, who will be part of the plan's e-filing team, and who will be the plan's Filing Coordinator (the person who performs the My PAA administrative tasks for the plan).
- **Set Up the Plan's E-Filing Team** - The plan's Filing Coordinator first adds the plan to his/her account and then sets up the plan's e-filing team by "inviting" each contributor and assigning each person's "permissions" (e.g., signing as the Plan Administrator). After a team member is invited, the plan is added to that person's account.

Premium Requirements for Plan Year 2007

- **Flat-Rate Premium Reflects Inflation** - For single-employer plans, the flat premium rate for 2007 is \$31 per participant, an increase from the 2006 rate of \$30 per participant. For multiemployer plans, the flat premium rate for 2007 is \$8 per participant, the same as in 2006.

- **Assumptions/Methodology for Calculating Variable-Rate Premium** - As a result of IRS's publication of a final rule providing new mortality tables to be used in determining current liability for plan years beginning in 2007, the assumptions and methods for calculating the variable-rate premium for 2007 plan years have changed. The Required Interest Rate is 100 percent (rather than 85 percent) of the corporate bond rate, and the market value (rather than the actuarial value) of assets must be used to determine unfunded vested benefits. See [Technical Update 07-1](#).
- **Variable-Rate Premium Cap** - The variable-rate premium may be capped for plans of certain small employers if the sponsor group (all contributing sponsors and all members of their controlled groups) has 25 or fewer employees. The per-participant cap is \$5 times the number of plan participants. This per-participant cap is then multiplied by the number of participants. Thus, the variable-rate premium cap for the plan as a whole is \$5 times the square of the participant count.

Proposed Premium Rule

On February 20, 2007, PBGC published a [proposed rule](#) to amend PBGC's premium regulations to implement certain provisions of the Deficit Reduction Act of 2005 and the Pension Protection Act of 2006 that are effective beginning in 2006 or 2007. Public comments on the proposed rule are due by April 23, 2007.

Premium Changes Coming for Plan Year 2008

As a result of the Pension Protection Act of 2006, substantial premium changes are expected for plan year 2008, particularly with respect to the variable-rate premium. PBGC is in the process of developing proposed regulations on these changes.

Minimum Lump Sum Amounts under PPA

The Pension Protection Act of 2006 (PPA) provides for new assumptions for determining minimum lump sum amounts effective (with some phase-in) for distributions in plan years beginning after December 31, 2007. PPA substitutes a rate that reflects the yield on corporate bonds of various maturities for the 30-year Treasury bond rate and changes the mortality table used in determining minimum lump sum values under section 417(e)(3) of the Code. For qualification purposes, plans are not required to be amended until the end of the 2009 plan year, and they may be amended after the plan termination date if the plan has been submitted for a determination letter. However, for purposes of Title IV of ERISA, plans terminating after the effective date of this PPA change must be amended before the date of plan termination in order to pay lower lump sum benefits under the PPA assumptions. PBGC's standard termination regulation limits the effectiveness of amendments adopted after a plan's termination date when determining plan benefits in a standard termination (29 CFR § 4041.8). Under this regulation, amendments adopted after the plan termination date generally may not be taken into account to the extent they decrease the value of plan benefits. Although there is an exception if the decrease is necessary to meet qualification requirements, this exception would not apply to an amendment that simply substitutes new assumptions for old assumptions. The amendment can preserve the old assumptions as an alternative basis and still meet the qualification requirement.

Visit PBGC's Web Site, www.pbgc.gov

For more information, go to PBGC's web site, select the Practitioners Page, and click on the appropriate link. For example, there is a link for "Online Premium Filing (My PAA)," another link for "Premium Forms and Instructions," and yet another link for "What's New," which contains items of interest and instructions to register for My PAA webcasts when scheduled. •

The Corner of Forms & Pubs

Welcome back to *The Corner of Forms & Pubs* - the EP version of Hollywood & Vine. The information here at the Corner is brief and topics needing further details will get their own full-length articles.

Forms Update

With the coming of spring, we're happy to announce that the following forms have been revised:

- The **Form 5558**, *Application for Extension of Time To File Certain Employee Plan Returns*, has been updated to better accommodate the fact that a signature is not required to receive an automatic 2 ½ -month extension to file the Form 5500 or Form 5500-EZ. There are now separate parts to the form that indicate whether filers are requesting an extension for one of the Form 5500-series annual returns or the Form 5330 (for which a signature is still required).
- The **Form 5330**, *Return of Excise Taxes Related to Employee Benefit Plans*, has finally been revised to include the IRC Section 4965 excise tax on prohibited tax shelter transactions. Line 5b has been added to the form. Other subtle changes are discussed on page one of the **Instructions for Form 5330** under the *What's New* heading.

EP TDI Notices

Beginning in February 2007, the IRS re-instated the generation of the EP Taxpayer Delinquency Investigation (TDI) Notices for Forms 5500 and 5500-EZ for the plan year ending December 31, 2004. The first delinquency notice, CP 403, is issued normally 15 months after an employee plan return's due date. If the filer does not respond within 15 weeks, the second delinquency notice, CP 406, is mailed.

The notices have been redesigned to be more understandable, which should increase the accuracy of the responses and reduce the need for follow-up correspondence. Additional information on these notices now appears on the Retirement Plan Community web page (www.irs.gov/ep) in an **FAQ** format under the "Form 5500 Corner" of the "EP Forms/Pubs/Products" topic. •

Publications Revised

The following publications have been revised for use in preparing 2006 returns and are currently available:

- **Publication 560**, *Retirement Plans for Small Business (SEP, SIMPLE, and Qualified Plans)*
- **Publication 575**, *Pension and Annuity Income*
- **Publication 590**, *Individual Retirement Arrangements (IRAs)*

All of the above-mentioned forms and publications are available on the **Retirement Plans Community web page** by clicking on "EP Forms/Pubs/Products" under the "Retirement Plans Community Topics" section. Hardcopies can be ordered by calling (800) TAX-FORM (829-3676).

In addition, the **Publication 571**, *Tax-Sheltered Annuity Plans (403(b) Plans) For Employees of Public Schools and Certain Tax-Exempt Organizations*, will be updated and available by early April.

Ring In the New Year

Before we get too far into the new year, did you know that the IRS has revised its highly popular **Publication 1518**, *2007 IRS Tax Calendar for Small Businesses and Self-Employed?* The calendar is filled with helpful hints, general tax information and a listing of the most common tax filing dates. Each month highlights a new tax tip intended to help small businesses during both the tax filing season and the entire year. A copy of the calendar can be ordered by calling (800) TAX-FORM (829-3676).

Resolution Possibility for Plans in 412(i) Audit Program

IRS is well along in the process of auditing potential abusive tax avoidance transactions involving defined benefit pension plans claiming to be 412(i) plans. 412(i) plans are pension plans funded exclusively by the purchase of life insurance and annuity contracts. They are not subject to the funding rules that apply to other defined benefit plans if they meet all of the requirements of section 412(i). Some taxpayers have attempted to use the special 412(i) funding rules to take excessive deductions and to avoid taxes they properly owe. Other purported 412(i) plans merely fail to follow the specific rules that apply to 412(i) plans, though the deductions taken generally are not greater than the deductions that would have been allowable had the plan not claimed to be a 412(i) plan. In all cases the defects must be corrected.

Some questions have arisen about the details of how the IRS is allowing plan sponsors to resolve these cases. This article will address one potential resolution - the option to treat the plan as if it had never claimed to be a 412(i) plan.

In certain circumstances, the IRS is permitting sponsors to treat the plan as if it had never claimed to be a 412(i) plan. Under this option, minimum required and maximum deductible contributions are calculated for all plan years in accordance with the funding rules applicable to defined benefit plans that do not meet the requirements of 412(i), i.e., "the section 412 funding rules." The calculations are done for all years back to the inception of the plan.

The plan sponsor must hire an enrolled actuary to do the calculations that would have been done for all prior years had the plan not claimed to be a 412(i) plan, using reasonable actuarial assumptions chosen and certified to by the enrolled actuary. The actuarial cost method must be a reasonable method. Required calculations include the calculation of the minimum required and maximum deductible contributions.

A spreadsheet documenting the funding calculations for all prior years and a signed Schedule B for the current year must be provided to the IRS. (Note that in many situations, the year that was originally under examination was two or three years ago, and the required Schedule B may be more recent than the last plan year that was actually examined.) The spreadsheet must show the calculation of the minimum required contribution and the maximum deductible amount for each year. An IRS actuary will review the calculations and underlying assumptions and methods. After approval by the IRS actuary, the agent will compare the contributions deducted with the minimum required and maximum deductible contributions calculated for the plan under the section 412 rules, and assess the appropriate penalties and sanctions. Penalties and sanctions are calculated and applied only for open tax years.

The minimum required and maximum deductible contributions calculations by the plan's enrolled actuary must be based on the plan provisions of the plan as they were while the plan was claiming to be a 412(i) plan. No provisions of the plan, such as benefit formula or eligibility for benefits, may be changed from the provisions of the plan as they were while the plan was claiming to be a 412(i) plan.

There has been some confusion about this last point. If the plan is a listed transaction, the plan provisions that are the basis of the funding calculations for the plan must be exactly the plan provisions of the plan as they were while the plan was claiming to be a 412(i) plan. The plan sponsor does not have the option to go back to prior years and change the provisions of the plan that is being valued. There is no basis in the IRC for permitting a plan sponsor to change plan provisions for prior plan years (other than the 2 ½ month grace period in section 412(c)(8)).

continued on page 15

Resolution Possibility for Plans in 412(i) Audit Program *continued from page 14*

If a plan is a listed transaction, the option to retroactively apply the section 412 funding rules back to inception is only available to purported 412(i) plans that do not have disqualifying defects. If a purported 412(i) plan has disqualifying defects, the plan must be treated as if it were a non-qualified plan since plan inception, all remaining insurance policies must be distributed, and all premiums paid on policies that were ever held by the plan must be taken into income. There are several types of disqualifying defects that auditors are finding. For example, coverage failures that result from neglecting to include any of the non-highly compensated employees in the plan and nondiscrimination failures caused by the plans' providing whole life insurance policies for the highly compensated employees and less valuable deferred annuity contracts for the non-highly compensated employees.

While the option to retroactively apply the section 412 funding rules back to plan inception may not be appropriate for some plan sponsors, many sponsors of plans that have no disqualifying defects are finding this to be an attractive option for settling their cases with the IRS. •

This Way to the Forums

The 2007 IRS Nationwide Tax Forums will be held in six locations across the country starting this summer. The EP seminars are “**Automatic Enrollment and Other Need-To-Know Provisions of the Pension Protection Act of 2006**” and “**Tax Issues on Distributions from Retirement Plans.**” “**Automatic Enrollment**” will focus on the need-to-know provisions of the PPA that are currently effective and relate to defined contribution plans. As a bonus feature, it will discuss the Automatic Enrollment provisions effective in 2008. “**Tax Issues on Distributions**” will discuss the tax issues arising from distributions from retirement plans before retirement, at retirement and after retirement. Information will also be provided on what to do if a mistake is made on a distribution to avoid jeopardizing the tax-qualified status of the retirement plan. In addition, EP and EO will sponsor a booth in the exhibit hall where you can pick up our products or speak with an EP or EO specialist. Dates and locations for 2007 are:

Hilton Atlanta	Atlanta, GA	July 17-19
Hilton Chicago	Chicago, IL	July 31-August 2
Rio All Suites	Las Vegas, NV	August 21-23
Hilton New York	New York, NY	August 28-30
Hilton Anaheim	Anaheim, CA	September 11-13
Disney's Coronado Springs	Orlando, FL	September 18-20

To get additional information about the Tax Forums, visit www.irs.gov and then go to “Tax Professionals,” and select “IRS Nationwide Tax Forums.” You can register online at www.taxforuminfo.com. •

Great Lakes Benefits Conference

Mark your calendars for May 3 - 4, 2007 so you won't miss the annual Great Lakes Benefits Conference in Chicago.

The Fairmont Chicago is located in downtown Chicago, near Millennium Park and the Lakefront. The IRS, Employee Plans, Great Lakes Area is again partnering with ASPPA and our cooperating sponsors to hold the 2007 Great Lakes Benefits Conference.

The conference is an opportunity to meet and discuss employee benefit issues with private practitioners and government agency representatives. The program focuses on exchanging information, advancing knowledge, and fostering sound principles, procedures, and practices.

General sessions include: Washington Legislative and Regulatory Update, IRS and DOL Examinations, Staggered Remedial Amendment Periods and Other Document Issues, EPCRS Update: What Has Changed After Rev. Proc. 2006-27, and 401(k) Fiduciary Issues and Investment Advice.

Scheduled breakout sessions include: PPA Funding, Deduction Limits and Other Issues, Ethics for Employee Benefits Attorneys, The Psychology of a 401(k) Participant, PPA - At-Risk Plans, Nonqualified Deferred Compensation and Code Section 409A Compliance, 401(k) Plan Design Overview, Cash Balance Plans: Post PPA and Recent Court Decision Analysis, Employee Stock Ownership Plans, Reporting and Disclosure after PPA Including E-Filing, Automatic Enrollment and Default Investment Elections Post PPA, PBGC Distress Termination Issues, Employee Plans Hot Topics, and Identifying and Correcting Prohibited Transactions.

For more information and to register online, visit the [ASPPA web site](#). You can also obtain information by contacting the ASPPA Meetings Department at (703) 516-9300. •

Mid-Atlantic Benefits Conference

The 2007 Mid-Atlantic Area Employee Benefits Conference will be held on April 26-27, 2007, at the Sheraton Philadelphia Center City in Philadelphia, PA. This annual conference is jointly sponsored by the IRS and the American Society of Pension Professionals & Actuaries (ASPPA). The conference attendees will be pension practitioners including actuaries, CPAs, attorneys and enrolled agents from private industry, public practice and the federal government.

The conference will feature panel discussions with public and private-sector participants. It will also provide a unique opportunity for attendees to meet and discuss common areas of interest with government representatives. Using an interactive panel format, discussions will focus on issues that are important to attendees. Also, a special pre-conference panel discussion/Q & A session will be held on Wednesday evening, April 25. This informal pre-conference session, entitled "A Chat with the IRS" will also be held at the Sheraton.

The conference will feature discussions on: Current Legislative and Regulatory Changes, Washington Update, Current Trends and Issues with IRS Exams, Employee Plans Correction Programs, Defined Benefit/Cash Balance Plans, Recent Guidance on 401(k) Plans and Roth 401(k) Provisions, Department of Labor Update: Pension Protection Act Compliance, Fiduciary Best Practices and Form 5500 Reporting, IRC 409A, IRS Updates - Local Initiatives, the Determination Letter Program and Recent and Upcoming Guidance, Best Practices on Plan Forms and Materials, Welfare Plan Updates, Ethics, and Ask the Experts.

Interactive tables will be offered again this year and will provide an opportunity for the attendees to meet informally for one-on-one discussion with Employee Plans specialists in the areas of Abusive Tax Transactions; ESOPs; SEP, SIMPLE, SARSEP and 403(b)/457 plans; EPTA/ Multiemployer; Examinations; Voluntary Compliance/Closing Agreement Program; and Customer Education and Outreach. The Department of Labor will also staff an interactive table.

For more information on this conference, contact the ASPPA Meetings Department at (703) 516-9300 or visit the [ASPPA web site](#). •

Northeast Employee Benefits Conference

Select your date and location! The Northeast Area Employee Plans Office of the IRS, in association with the Northeast Area's Pension Liaison Group, and the American Society of Pension Professionals & Actuaries (ASPPA), announces the scheduling of this year's Northeast Employee Benefits Conference.

The conference will be held in Boston on June 7, 2007, once again at The Colonnade Boston Hotel. On June 8, 2007, the conference will be repeated in New York with a new location this year at the Park Central New York Hotel in Manhattan. These two sites provide pension professionals from New York, New Jersey and New England the opportunity to attend a conveniently located conference.

The conference educates attendees about current regulatory, legislative, and administrative topics. The conference also provides participants an opportunity to discuss employee benefit issues with colleagues, as well as local and national government employees from the IRS and the Department of Labor such as Andrew Zuckerman, Director, EP Rulings & Agreements, Monika Templeman, EP Examinations, James Holland, Jr., Manager EP Technical, Martin Pippins, Manager EP Technical Guidance and Quality Assurance, William Schmidt, Senior Technical Reviewer, Office of Division Counsel/Associate Chief Counsel (TE/GE), Donald Kieffer, Manager EP Determinations Northeast and Kristen Zarenko, Pension Law Specialist, DOL/EBSA Office of Regulations and Interpretations.

This year's agenda includes panel discussions on the latest IRS Projects and Initiatives, the Pension Protection Act of 2006 (PPA), DOL Issues & Initiatives, and comprehensive breakout sessions on Roth 401(k)s, DC Plan Designs after PPA, DB Funding Issues after PPA, EGTRRA & the Remedial Amendment Period and Nonqualified Deferred Compensation Arrangements Under IRC 409A.

For more information and to pre-register for the Northeast Employee Benefits Conference, contact the ASPPA Meetings Department at (703) 516-9300 or visit the ASPPA web site at www.asppa.org. Submit questions in advance to meetings@asppa.org.

20th Annual Cincinnati Employee Benefits Conference

The 20th Annual Cincinnati Employee Benefits Conference will be held June 14 - 15, 2007 at the Northern Kentucky Convention Center in Covington, Ky.

The presenting organizations will be the IRS, U.S. Department of Labor and Cincinnati Bar Association Employee Benefits Committee.

This conference provides pension professionals with an excellent opportunity to meet and discuss employee benefit issues with private practitioners and key government agency representatives. Attendees can earn continuing professional education (CPE) credits.

The conference will feature discussions on: Washington Legislative & Regulatory Update, National IRS Examination Program Update, EPCRS; 403(b) & 457 Plans for Tax-Exempt Employers, Pre-Approved Plans/EP Determination Letter Issues, 401(k) Plans, DOL Update, Health Savings Accounts, and 409A Deferred Compensation.

There will be an IRS booth that will provide an opportunity for the attendees to ask questions of EP specialists. There will be specialists available with specific knowledge in the areas of EPCRS, Volume Submitter Plans, Technical Screening, EP Examinations, Customer Education and Outreach, and Customer Service. The Department of Labor and other vendors will also be represented.

The conference is an essential learning and interactive experience for serious pension practitioners. IRS and the CBA invite pension practitioners to join them at this conference. For more information contact the CLE Department, Cincinnati Bar Association at (513) 381-8213.

Mark Your Calendars for the 36th Annual Pension Trust and Employee Benefits Seminar

The University of South Carolina's Moore School of Business, IRS and DOL will host a benefits seminar at the Doubletree Guest Suites, Charlotte, North Carolina on April 26 and 27, 2007. This will be the 36th annual benefits seminar, which is designed for professionals who specialize in the employee benefits area. Internal Revenue Service has been a co-sponsor of this conference since its inception. In addition to providing a full day and a half of technical discussions and updates, the seminar will also offer a chance for attendees to network with other benefits professionals.

IRS speakers this year will feature Janet Mak, Manager, Employee Plans Voluntary Compliance Group for Mid-Atlantic and Northeast Areas and Stacy Smith, Employee Plans Specialist. Brenda Rickborn, Associate Regional Director, Employee Benefits Security Administration, and Michael Auerbach, Chief, Division of Accounting Services, Employee Benefits Security Administration, will be the featured DOL speakers. There will also be several speakers from the private sector.

The seminar is accredited for attendees to earn CPE credits for accountants, CLE credits for attorneys, and CPE credits for South Carolina life insurance agents.

For those who are interested in attending, please feel free to contact Helen Doerpinghaus, at the University of South Carolina at doerp@moore.sc.edu for further information. You may also contact Stacy Smith at stacy.smith@irs.gov.

2007 Los Angeles Benefits Conference

IRS employees contributing to this edition of the *Employee Plans News* are:

**Robert Bell,
Craig Chomyok,
Larry Heberle,
Doug Jordan,
Karen Justesen,
Teresita Laureano,
Betty McClernan,
Peter McConkey,
Mark O'Donnell,
Nancy Payne,
Sharon Polo,
Shelley Pope,
Wiley Ransom,
Mike Rubin,
Gary Runge,
Bonnie Schaumberg,
John Schmidt,
Brenda Smith-Custer,
Mikio Thomas,
and
Andrew Zuckerman**

The IRS, in association with the American Society of Pension Professionals & Actuaries (ASPPA), National Institute of Pension Administrators and Western Pension & Benefits Conference presented the 2007 Los Angeles Benefits Conference on January 25-26 at the Hilton Los Angeles/Universal City.

On January 24th, a pre-conference was held that provided an opportunity for practitioners to converse with IRS and DOL employees regarding current issues. Conference speakers included practitioners, the DOL, the IRS and the Treasury Department.

Topics at this year's conference included: Washington Update, EP Examinations and Enforcement Activities, DB Funding Issues, Plans for Non-Profit/Governmental Plans, Administrative and Design Issues Under 409A, EPCRS, 401(k) Plans, and DOL Regulatory Updates.

Luncheon speakers were Adele M. Hayutin, PhD and Evelyn Petschek, former Commissioner, IRS, TE/GE.

Employee Plans "Interactive Tables" were featured at the conference. Attendees had the opportunity to have one-on-one discussions with top IRS government officials.

For more information regarding future conferences, visit the [ASPPA web site](#) or phone them at (703) 516-9300.

Calendar of EP Benefits Conferences

UPCOMING EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Further Information, Please Contact
Mid-Atlantic Benefits Conference	04/26/07-04/27/07	Philadelphia, PA	ASPPA	www.asppa.org
Great Lakes Benefits Conference	05/03/07-05/04/07	Chicago, IL	ASPPA & cooperating sponsors	www.asppa.org
Northeast Area Benefits Conference (2 Locations)	06/07/07-06/08/07	New York, NY & Boston, MA	ASPPA & NE Area Pension Liaison Group	www.asppa.org
20th Annual Cincinnati Employee Benefits Conference	06/14/07-06/15/07	Cincinnati, OH	Cincinnati Bar Association	CBA (513) 381-8213

RECENT EVENTS...

Name	Date(s)	Location	Co-Sponsor(s)	For Information, See
Los Angeles Benefits Conference	01/25/07-01/26/07	Los Angeles, CA	ASPPA, NIPA, WPBC & cooperating sponsors	<i>EP Benefits Conferences Calendar at www.irs.gov/ep</i>
17th Annual SWBA/IRS Employee Benefits Conference	11/15/06-11/16/06	Dallas, TX	Southwest Benefits Association (SWBA)	
19th Annual Cincinnati Employee Benefits Conference	06/15/06-06/16/06	Cincinnati, OH	Cincinnati Bar Association	
Northeast Area Benefits Conference (2 Locations)	06/07/06-06/08/06	Tarrytown, NY & Boston, MA	ASPPA & NE Area Pension Liaison Group	
Great Lakes Benefits Conference	05/15/06-05/16/06	Chicago, IL	ASPPA & cooperating sponsors	
Mid-Atlantic Benefits Conference	05/08/06-05/09/06	Philadelphia, PA	ASPPA	
Benefits Conference of the South	03/20/06-03/21/06	Atlanta, GA	ASPPA	



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